

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 27, 2017

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Ramiro Garcia, Jr., Deputy Director
Office of Compliance and Enforcement

Docket No.: 2016-1919-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 334, Underground and Aboveground Storage Tanks
HB 7 (84th), SB 1557 (85th), and Implementation of Federal Petroleum
Storage Tank Updates
Rule Project No. 2016-019-334-CE

Background and reasons for the rulemaking:

In order for the State of Texas to be consistent with federal underground storage tank (UST) requirements, the Texas Commission on Environmental Quality (TCEQ, agency, or commission) incorporates specific United States Environmental Protection Agency (EPA) rule changes into state rules after promulgation.

In 1988, the EPA promulgated UST regulations (40 Code of Federal Regulations (CFR) Part 280), which set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or remove those not in compliance. That same year, the EPA also promulgated regulations for state program approval (40 CFR Part 281), which allows states to operate a UST regulatory program in lieu of federal regulation. EPA has not significantly changed these regulations since their adoption in 1988.

On July 15, 2015, the EPA published updates to the UST regulations and the state program approval regulations. The EPA's stated goal of revising the 1988 federal UST regulations was to establish federal requirements similar to key provisions of the Energy Policy Act of 2005 (EPAct). The revisions increase the emphasis on proper operation and maintenance of UST equipment, address UST systems deferred in the 1988 regulations, and include current technologies and practices.

Separate from the federally mandated issues above, this rulemaking also proposes minor rule revisions relating to the fee on delivery of petroleum products and the funding of the Petroleum Storage Tank Remediation (PSTR) account, which are required by the Texas Water Code (TWC). More specifically, House Bill (HB) 7, 84th Texas Legislature, amended TWC, §26.3574(b-1) to clarify the calculation method of the petroleum products delivery fee, which funds the PSTR account. The proposed rule change will reflect the fee reduction changes that were implemented in 2015 through the *Texas Register* and the Texas Comptroller's rules, but were not reflected in the TCEQ's rules.

Additional minor rule revisions related to the fee on the delivery of certain petroleum products are proposed to implement the amendment to TWC, §26.3574, made by Senate Bill (SB) 1557, 85th Texas Legislature. The revisions include changing the term "operator of a bulk facility" to "supplier" such that the "supplier" would now collect the fees on delivery of a petroleum product.

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Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking would include rule revisions required by the EPA pertaining to USTs.

The revisions include:

- adding periodic operation and maintenance requirements for UST systems;
- adding requirements to ensure UST system compatibility before storing certain biofuel blends; and
- updating codes of practice.

In addition to updates to EPA's UST regulations, this rulemaking also proposes minor rule revisions relating to the fee on delivery of petroleum products and the funding of the PSTR account (HB 7, 84th Texas Legislature, which amended TWC, §26.3574(b-1)), and rule revisions related to the fee on the delivery of certain petroleum products (SB 1557, 85th Texas Legislature, which amended TWC, §26.3574(a) - (i)).

B.) Scope required by federal regulations or state statutes:

This rulemaking will update 30 TAC Chapter 334 to include federal rule revisions required by the EPA for the State of Texas to reapply for state program approval; updates to fee on delivery of petroleum products (HB 7, 84th Texas Legislature, amended TWC, §26.3574(b-1)); and updates the fee on the delivery of certain petroleum products (SB 1557, 85th Texas Legislature, amended TWC, §26.3574(a) - (i)).

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

- TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment;
- TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013;
- TWC, §26.011, which requires the commission to control the quality of water by rule;
- TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue;
- TWC, §26.341, which states that the policy of this state is to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks (ASTs) that may pollute groundwater and surface water resources, and requires the use of

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all reasonable methods, including risk-based corrective action to implement this policy;

- TWC, §26.3441, requires standards and rules concerning ASTs adopted by the commission to be as stringent as federal requirements
- TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding UST and ASTs;
- TWC, §26.347, which requires the commission to adopt performance standards, including design, construction, installation, release detection, and compatibility standards for existing and new UST systems;
- TWC, §26.3475, which requires UST systems to comply with commission requirements for tank release detection equipment and spill and overfill equipment
- TWC, §26.348, which directs the commission to adopt standards of performance for maintaining a leak detection system;
- TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or an AST;
- TWC, §26.357, requires standards and rules concerning USTs adopted by the commission to be at least as stringent as federal requirements; and
- TWC, §26.3574(b-1), which requires the commission to set the amount of the petroleum products delivery fee.

Effect on the:

A.) Regulated community:

The regulatory revisions generally focus on additional testing and inspection of existing equipment. The proposed revisions do not reflect large-scale equipment investments or significant changes from existing state rules to operations at the facility level. Because the State of Texas has already incorporated many of the federal revisions to the state requirements, the impact to the regulated community is expected to be minimized.

B.) Public:

No direct effect on the public is anticipated.

C.) Agency programs:

By proposing these revisions, the commission can pursue renewal of state program approval from the EPA.

Stakeholder meetings:

An early, informal meeting was requested by industry representatives in order to begin dialogue on the new federal rule revisions. This meeting was held on May 16, 2016.

On May 23, 2017, a stakeholder meeting was held with interested parties. Many of the attendants had concerns about the new requirements. Most concerns focused on the added costs associated with the proposed rules.

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Specifically, stakeholders voiced dissatisfaction with the new periodic testing requirements for containment sumps and overspill protection equipment. The stakeholders' concern stemmed from the added cost of testing UST systems and the allowable methods to dispose of potentially contaminated water used in testing.

In response to this concern, the commission has added a low liquid level testing method which can be used for containment sump tightness testing. This allows the regulated community to meet requirements for containment sump tightness testing, while reducing the volume of water they are responsible for disposing.

Additionally, the commission has added language which allows for the reuse of water in subsequent tests when making use of the low liquid level testing method described previously. Again, this was in response to stakeholder concerns aimed at costs associated with periodic testing requirements for containment sumps and overfill protection equipment.

In order to accommodate the low liquid level testing method and allow for the reuse of water for subsequent testing, the commission is proposing amendments to General Permit Number TXG830000 (Project No. 2017-020-OTH-NR) which currently authorizes the disposal of petroleum contaminated wastewater. The proposed amendments will expand the applicability of the general permit to include petroleum contaminated wastewater that is generated as a result of testing containment sumps and overfill protection equipment. Allowing this wastewater to be disposed of in accordance with the general permit, rather than an individual permit, will reduce the costs associated with compliance testing and avoid the costs and delays that would result if members of the regulated community were required to obtain an individual wastewater discharge permit.

A formal public hearing is tentatively planned for January 9, 2018, at agency headquarters in Austin, Texas following rule proposal by the commission.

Potential controversial concerns and legislative interest:

This rulemaking implements updates to fee on delivery of petroleum products (HB 7, 84th Texas Legislature, amended TWC, §26.3574(b-1)), which has been previously implemented, and updates the fee on the delivery of certain petroleum products (SB 1557, 85th Texas Legislature, amended TWC, §26.3574(a) - (i)). There are no known controversial concerns or additional legislative interest at this time.

Will this rulemaking affect any current policies or require development of new policies?

The rulemaking will create additional requirements in Texas rules and may cause the scope of a typical inspection to expand to include the new requirements.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The State of Texas currently operates an independent UST regulatory program in lieu of federal regulation. However, Texas is required to reapply for state program approval no later than October 13, 2018. While the commission may opt to incorporate all, some, or

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none of the EPA federal revisions into the state rules, state program approval may not be granted by the EPA.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: November 15, 2017

Anticipated *Texas Register* publication date: December 1, 2017

Anticipated public hearing date: January 9, 2018

Anticipated public comment period: December 1, 2017 - January 9, 2018

Anticipated adoption date: May 9, 2018

Agency contacts:

Cynthia Gandee, Rule Project Manager, Compliance and Enforcement, (512) 239-0179

Isaac Ta, Staff Attorney, (512) 239-0683

Patricia Durón, Texas Register Rule/Agenda Coordinator, (512) 239-6807

Attachments:

1. *Federal Register*, EPA 40 CFR Parts 280 and 281, Revising Underground Storage Tank Regulations - Revisions to Existing, Requirements and New Requirements for Secondary Containment and Operator Training; Final Rule Volume 80 No. 135, pages 41566 - 41683)
2. House Bill 7 (84th Texas Legislative Session)
3. Senate Bill 1557 (85th Texas Legislative Session)

cc: Chief Clerk, 2 copies
Executive Director's Office
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Cynthia Gandee
Patricia Durón